

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
OMAR SMITH,

Plaintiff,

-against-

CITY OF NEW YORK and NEW YORK POLICE
OFFICER DETECTIVE CHRISTOS DEFTEREOS
(SHIELD NO.: 1081), in his individual and official
capacity,

Defendants.
-----X

Civil Action No.:
14 CV 2682 (CM)

**FIRST AMENDED
COMPLAINT**

**JURY TRIAL
DEMANDED**

Plaintiff, OMAR SMITH, by his attorney, George T. Peters, Esq., complaining of
the defendants herein, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. OMAR SMITH brings this action for compensatory punitive damages and attorney's fees pursuant to defendant's violation of his civil rights secured by 42 U.S.C. § 1983, 1985, 1986 and 1988, by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and under the laws of the State of New York. OMAR SMITH is a fifty-five (55) year old, Black male, citizen of the United States of America, the State of New York, County of New York.

2. OMAR SMITH was deprived of his constitutional and common law rights when defendant CITY OF NEW YORK through and its New York City Police Department agents, employees and/or officers falsely arrested and/or falsely imprisoned OMAR SMITH, were negligent in ignoring that OMAR SMITH was no the OMAR SMITH they were looking for, and caused OMAR SMITH to become physically, psychologically and emotionally injured. CITY OF NEW YORK was negligent in hiring,

retaining and not properly training and supervising its New York City Police Department employees.

JURISDICTION

3. This action is brought pursuant to Civil Rights Act, 42 U.S.C. §§ 1985, 1986 and 1988, and of rights secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. 1331 and 1343 and the aforementioned statutory and constitutional provisions.

4. Plaintiff further invokes this Court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over any and all State law claims and causes of action which d from the same nucleus of operative facts and are part of the same case or controversy at give rise to the federally based claims and causes of action.

VENUE

5. Venue is proper for the United State District Court for the Southern District of New York pursuant to 28 U.S.C. §1391(b) because the claims arose in this district

JURY DEMAND

6. Plaintiff OMAR SMITH respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

7. Plaintiff OMAR SMITH is a male resident of the County of New York, City and State of New York.

8. Defendant CITY OF NEW YORK (hereinafter referred to as "CITY" is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York, and as such is responsible for the practices, policies and customs of its agencies, New York City Police Department officials, as well as the hiring, screening, training, supervising, controlling and disciplining of those persons employed by its agencies.

9. Defendant, CITY, employs police officers through the New York City Police Department (hereafter referred to as "NYPD") and as such is responsible for the practices, policies and customs of NYPD.

10. Defendant, NEW YORK POLICE OFFICER DETECTIVE CHRISTOS DEFTEREOS (SHIELD NO.: 1081) (hereinafter referred to as "DETECTIVE DEFTEREOS), is and was at all times relevant herein, an officer, employee and agent of the NYPD.

11. The individual defendant, DETECTIVE DEFTEREOS, is being sued herein in his individual and official capacity.

12. At all relevant times, the Defendants were engaged in a joint venture, assisting each other in performing the various actions described herein and lending their physical presence and support and the authority of their offices to one another.

STATEMENT OF FACTS

13. On or about May 13, 2011, OMAR SMITH, was arrested by Defendant, DETECTIVE DEFTEREOS, and was charged with criminal sale of crack/cocaine.

14. Plaintiff OMAR SMITH, resides in New York, New York.

15. NYPD held OMAR SMITH in jail for two (2) years one (1) month and eleven (11) days on sale of crack/cocaine charges.

16. On or about June 24, 2013, OMAR SMITH was released after a New York Supreme Court Judge dismissed the charges against him as it was clear that he was not the OMAR SMITH NYPD sought in connection with a felony.

17. The Defendants, CITY and DETECTIVE DEFTEREOS, through the NYPD should have investigated OMAR SMITH's identity and not deprived him of his civil rights.

18. At all times mentioned herein, defendants acted intentionally, wilfully, maliciously, negligently and with reckless disregard for and deliberate indifference to OMAR SMITH 's civil rights.

FIRST CAUSE OF ACTION
Deprivation of Plaintiff's Federal Constitutional Rights
False Arrest

19. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 18 with the same force and effect as if fully set forth herein.

20. As a direct and proximate result of the defendants', CITY and DETECTIVE DEFTEREOS, actions, OMAR SMITH, was deprived of rights, privileges and immunities secured to him under the Constitution and laws of the State of New York and the United States, including, but not limited to his rights under the Fourth, Fifth, Eighth and Fourteenth Amendments and 42 U.S.C. §1983 to be secure in his person, to be protected against cruel and unusual punishment, to be provided with humane conditions of confinement, and to equal protection of the laws.

21. CITY established a custom, policy and/or practice of encouraging, approving and/or tolerating by NYPD's employees, including, but not limited to Defendant DETECTIVE DEFTEREOS' improper handling of civilians before, during and after arrests, and subsequent attempts to conceal such actions while failing to adequately train, supervise and discipline its agents, employees and/or officers.

22. CITY, DETECTIVE DEFTEREOS and NYPD's actions in participating in, executing, causing to be executed, failing to intervene to cause the cessation of, approving or ratifying the arrest of the plaintiff OMAR SMITH violated the civil rights of the plaintiff pursuant to the First, Fourth, Fifth and Fourteenth Amendment to, and the Due Process Clause of the United States Constitution.

23. Defendants CITY and DETECTIVE DEFTEREOS, through the NYPD have adopted municipal policies, practices and customs that have caused the violation complained of herein; and in the alternate have actual or constructive notice of a pattern of constitutional violation described herein and have failed to take action, thereby allowing the continuation of such a policy or custom, and causing the harms complained herein.

24. Defendants' actions were undertaken under the colour of law and would not have existed but for said defendants' use of their official power.

25. The acts and omissions of defendants CITY and DETECTIVE DEFTEREOS violated the constitutional rights of the plaintiff OMAR SMITH.

26. Defendant CITY and NYPD have tolerated and failed to discipline and/or train officers regarding unlawful conduct towards persons, including specifically false arrest, thereby causing the violations complained of herein.

27. As a result of the aforesaid violation of OMAR SMITH's rights, he has sustained emotional, physical and psychological injuries.

28. That by reason of the foregoing, OMAR SMITH suffered serious physical and emotional injuries all to his damage in the sum of One Million Dollars (\$1,000,000.00) as to plaintiff.

SECOND CAUSE OF ACTION
False Imprisonment

29. Plaintiff OMAR SMITH repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 28 with the same force and effect as if more fully set forth at length herein.

30. At all times relevant herein all defendants acted with the intention of confining OMAR SMITH within fixed boundaries, the act directly or indirectly resulted in confinement, and OMAR SMITH was conscious of the confinement.

31. Defendants, CITY and DETECTIVE DEFTEREOS, imposed by force or threats an unlawful restraint upon plaintiff OMAR SMITH's freedom of movement, to wit by arresting him and transporting him to a facility where he was detained in a cell for two (2) years one (1) month and eleven (11) days.

32. As a direct and proximate result of the conduct of Defendants, OMAR SMITH, suffered harm and damages including but not limited to the aforesaid damages.

33. Defendant CITY is liable for Defendant DETECTIVE DEFTEREOS and NYPD's actions under the doctrine of respondeat superior.

34. As a result of the foregoing, OMAR SMITH seeks compensatory damages in the sum of One Million Dollars (\$1,000,000.00).

THIRD CAUSE OF ACTION
Negligence

35. Plaintiff OMAR SMITH repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 34 with the same force and effect as if more fully set forth at length herein.

36. The above-mentioned acts and conduct committed by defendants CITY and OFFICER DEFTEREOS constituted negligence for their failure to get OMAR SMITH the aid he needed, failure to follow NYPD rules and procedures and failure to otherwise handle the situation properly pursuant to the procedures and guidelines set forth by the NYPD, despite having reasonable opportunity to do so.

37. Defendant CITY, their agents, servants or employees, including, but not limited to Defendant DETECTIVE DEFTEREOS acted negligently, carelessly and recklessly in allowing OMAR SMITH's rights to be violated.

38. As a result of the aforesaid, OMAR SMITH sustained injuries and damages previously described in this complaint.

39. As a result of the foregoing, OMAR SMITH seeks compensatory damages in the sum of One Million Dollars (\$1,000,000.00).

FOURTH CAUSE OF ACTION
Malicious Prosecution

40. Plaintiff OMAR SMITH repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 39 with the same force and effect as if more fully set forth at length herein.

41. Defendants, CITY and DETECTIVE DEFTEREOS, instituted criminal process against the plaintiff with malice.

42. The charges were not based upon probable cause that is the state of the facts in the mind of the prosecutor would not lead a man of ordinary caution and prudence to believe, or entertain an honest or strong suspicion that OMAR SMITH was guilty.

43. Defendants had a duty to ascertain whether there was reasonable and probable cause for a prosecution.

44. Defendants breached that duty.

45. The criminal proceeding was terminated in favor of OMAR SMITH when the charges were dismissed by the Court.

46. As a result of the foregoing, OMAR SMITH seeks compensatory damages in the sum of One Million Dollars (\$1,000,000.00).

PRAYER FOR RELIEF

WHEREFORE, plaintiff OMAR SMITH demands the following relief jointly and severally against all defendants as follows:

(1) On the FIRST CAUSE OF ACTION against defendants, compensatory and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as to Plaintiff;

(2) On the SECOND CAUSE OF ACTION against defendants compensatory and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as to Plaintiff;

(3) On the THIRD CAUSE OF ACTION against defendants, compensatory and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as to Plaintiff;

(4) On the FOURTH CAUSE OF ACTION against defendants, compensatory and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as to Plaintiff;

(5) That Plaintiff recovers the cost of the suit herein, including reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and

(6) That Plaintiff has such other and further relief, as this Court shall deem just and proper.

Dated: September 25, 2015
New York, New York

/s/George T. Peters
George T. Peters, Esq.
The Law Office of George T. Peters, PLLC
Attorney for Plaintiff
402 West 145th Street, 2nd Floor
New York, New York 10031
(347) 751-0157
g.peters@myattys1.com